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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,698	11/20/2003	Joseph A. Pruitt	812495/220 (10.83)	9310
64553 7590 07/29/2009 Nixon Peabody LLP (F5 PATENTS) Gunnar G. Leinberg 1100 Clinton Square Rochester, NY 14604				
EXAMINER				
VETTER, DANIEL				
ART UNIT		PAPER NUMBER		
3628				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/717,698

Applicant(s)

PRUITT ET AL.

Examiner

DANIEL P. VETTER

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-48, 50 and 68-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-48, 50 and 68-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. Claims 44-48, 50, and 68-78 are currently pending.

Response to Amendment

2. The declaration filed on June 15, 2009 under 37 CFR 1.131 has been considered but is ineffective to overcome the Moore reference.
3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Moore reference to either a constructive reduction to practice or an actual reduction to practice. The priority date of Moore is December 23, 2002. The constructive reduction to practice is the date of filing of the instant application, November 20, 2003. Applicant alleges that conception occurred before December 23, 2002. However, as no actual reduction to practice is shown or alleged, almost an entire year of diligence must be accounted for up until filing of the instant application. Applicant has not satisfied this burden with the Declarations and Exhibits filed June 15, 2009.
4. It is not enough merely to allege that applicant had been diligent. *Ex parte Hunter*, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence. An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.) Diligence requires that applicants must be specific as to dates and facts. *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949). As stated above, in this case almost an entire year period of diligence must be shown. By way of an example, a 2-day period lacking activity has been held to be fatal. *In re Mulder*, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983). The supplied Exhibits do not contain dates from which to draw specific conclusions about when activity relied upon to show diligence took place. Moreover, the supplied Declarations do not supply these required specific dates and facts. They

merely allege that some activity related to the invention occurred at some points during the year between Moore's filing and the filing of the instant application and, as such, amount to a mere pleading. Accordingly, as the Declarations cannot serve to overcome the priority date of Moore, the rejections under § 102(e) are maintained. See MPEP §§ 715.07(a) and 2138.06 for further discussion on what is required to show "reasonable diligence."

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 44-48, 50, and 68-78 are rejected under 35 U.S.C. 102(e) as being anticipated by Moore, et al., U.S. Pat. Pub. No. 2004/0122926 (Reference A of the PTO-892 part of paper no. 20090106).

7. As per claim 44, Moore teaches a method for determining a service provider in a computer network, comprising:

performing a transaction, by a client computer, with a first service provider, the first service provider being a server computer (§ 0030);

automatically collecting feedback data pertaining to the transaction (§ 0037);

transmitting, to a directory service, a request for a provider of a second service, the directory service including a UDDI server configured to execute a UDDI protocol (§ 0041);

transmitting, to the directory service, at least a portion of the feedback data from the transaction involving the first service provider (§ 0037); and

receiving, from the directory service, a response based on the second service request, the at least a portion of the feedback data, and the UDDI protocol, wherein the response comprises one or more service locations (§ 0054).

8. As per claim 45, Moore teaches claim 44 as described above. Moore further teaches the feedback data comprises an evaluation of a service provided by the first service provider (§ 0045).

9. As per claim 46, Moore teaches claim 44 as described above. Moore further teaches the feedback data comprises data representing a negative rating of the first service provider (§ 0053).

10. As per claim 47, Moore teaches claim 44 as described above. Moore further teaches the feedback data comprises data representing a positive rating of the first service provider (§ 0053).

11. As per claim 48, Moore teaches claim 44 as described above. Moore further teaches the feedback data comprises a quality of content provided by the first service provider (§ 0070).

12. As per claim 50, Moore teaches claim 44 as described above. Moore further teaches receiving, from the client computer, a second feedback data pertaining to a transaction between the client computer and one or more service providers (§ 0045); and transmitting, to the directory service, the second feedback data, wherein the response is at least in part based on the second feedback data (§ 0045).

13. As per claim 68, Moore teaches claim 44 as described above. Moore further teaches automatically selecting, solely by the client computer, from the one or more service locations, a service location based on the at least a portion of feedback data (§ 0054).

14. As per claim 69, Moore teaches claim 44 as described above. Moore further teaches the feedback data comprises connection characteristics (§ 0037).

15. As per claim 70, Moore teaches claim 69 as described above. Moore further teaches the connection characteristics include one or more of measured latency, network path used for a connection, bandwidth, response time, and dropped packets (§ 0037).

16. As per claim 71, Moore teaches a method for determining a computer service provider in a network, comprising:

monitoring, in the network, an electronic transaction involving a client computer and a first computer service provider, the first computer service provider configured to provide the client computer with a first service, the network including a directory service device and at least one data collector device (§§ 0030, 37);

automatically collecting feedback data by the at least one data collector device, the feedback data pertaining to the electronic transaction (§ 0037);

receiving in the directory service device a service request for a location of one or more computer service providers configured to provide a second service (§ 0041);

transmitting, from the at least one data collector device to the directory service device, at least a portion of the automatically collected feedback data (§ 0037); and

transmitting, from the directory service device, a response based on the service request and the at least a portion of the automatically collected feedback data, wherein the response comprises one or more locations of computer service providers (§ 0054).

17. As per claim 72, Moore teaches claim 71 as described above. Moore further teaches the directory service device includes a UDDI server configured to execute a UDDI protocol (§§ 0004-05, 41).

18. As per claim 73, Moore teaches claim 72 as described above. Moore further teaches the UDDI server executes the UDDI protocol to generate the response comprising the one or more locations of computer service providers (§§ 0040-42).

19. As per claim 74, Moore teaches a network apparatus for providing service locations to a client computer, the network apparatus comprising:

a data collector configured to receive feedback data associated with one or more transactions between one or more client computers and one or more computer service providers (§§ 0037, 45);

a data repository coupled to the data collector, the data repository including a data storage device for storing the feedback data collected by the data collector (§ 0045);

a UDDI server including a UDDI registry, the UDDI registry including information associated with the one or more computer service providers (§ 0040), the UDDI server configured to execute a UDDI protocol to generate a list of service locations for one or more of the computer service providers in response to a request from the client computer (§ 0041), the list of service locations based at least in part on the feedback data stored in the data repository and the information associated with the computer service providers (§ 0054).

20. As per claim 75, Moore teaches claim 74 as described above. Moore further teaches the network apparatus is a traffic manager on a network (Fig. 4).

21. As per claim 76, Moore teaches claim 74 as described above. Moore further teaches the feedback data includes computer connection characteristics (§ 0037).

22. As per claim 77, Moore teaches claim 76 as described above. Moore further teaches the computer connection characteristics include at least one of measured latency and network path used for a connection (§ 0037).

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL P. VETTER whose telephone number is (571)270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DPV/

/JOHN W HAYES/

Supervisory Patent Examiner, Art Unit 3628